

1 Mark L. Smith (#14762)
 2 **SMITH WASHBURN, LLP**
 3 6345 South Pecos Road, Suite 202
 4 Las Vegas, Nevada 89120
 Telephone: (725) 666-8701
 Facsimile: (725) 666-8710
 5 msmith@smithwashburn.com
jfonnesbeck@smithwashburn.com

6 *Attorneys for Reflex Media, Inc.*

7 **IN THE UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF NEVADA**

9	REFLEX MEDIA, INC., a Nevada Corporation, <i>et al.</i> , Plaintiffs, v. AARON WALLACE, an individual, <i>et al.</i> , Defendants.	10 Case No. 2:18-cv-02423-RFB-BNW [PROPOSED] JOINT DISCOVERY PLAN AND SCHEDULING ORDER SPECIAL SCHEDULING REVIEW REQUESTED
---	--	--

11 Plaintiffs Reflex Media, Inc. (“*Reflex*”), and Defendant Aaron Wallace (“*Wallace*”), by
 12 and through their respective counsel of record, and pursuant to Federal Rule of Civil Procedure
 13 26(f), hereby respectfully submit their proposed Joint Discovery Plan and Scheduling Order.
 14 Discovery in this case, except for jurisdictional discovery, had previously been stayed until the
 15 Court’s ruling on jurisdiction on January 22, 2021 ([ECF No. 213](#)). At that time, the parties were
 16 ordered to submit this Proposed Joint Discovery Plan and Scheduling Order. The parties make a
 17 special scheduling review request that a) the discovery period begin from date of the Court’s
 18 entry of the scheduling order, rather than from the date of first appearance by Defendant
 19 Wallace, and b) that the period for discovery be 270 days instead of 180, given the limitations,
 20 travel restrictions and other circumstances caused by the Covid-19 virus.
 21
 22

23 ////

24 ////

1 **A. Special Scheduling Review:**

2 Defendant Wallace moved to dismiss this case for lack of personal jurisdiction on April
 3 2, 2019. This Court heard that motion on March 11, 2020 and denied the Motion without
 4 prejudice, ordered jurisdictional discovery and stayed all other discovery. (See [ECF No. 164](#),
 5 [174](#).) Prior to jurisdictional discovery, discovery was also stayed. ([ECF No. 83](#).) On January 22,
 6 2021, this Court ruled in Reflex's favor as to jurisdiction ([ECF No. 213](#)) and ordered the Parties
 7 to file this Joint Discovery Plan and Scheduling Order by February 5, 2021.

8 The Parties agree in asking for not only a standard 180-day discovery plan, but also for
 9 an additional 90 days due to the constraints associated with the ongoing COVID-19 pandemic.
 10 However, the Parties differ as to when that 270-day discovery schedule should start. The Parties'
 11 difference relates to Wallace's filing (on this day of February 5), of a Motion for Leave to File a
 12 Supplemental Motion to Dismiss and the Supplemental Motion to Dismiss ([ECF No. 214](#)).
 13 Reflex does not believe that discovery or any other case activity or deadline should be stayed
 14 while this Motion is pending, while Wallace believes that discovery should be so stayed.
 15 Therefore, the Parties have each submitted their own case schedule in Section C, below. Both
 16 schedules have (roughly) the same amount of time for discovery and other case activities.
 17 However, the dates in Reflex's proposed schedule are set from the anticipated date on which the
 18 Magistrate Judge will approve this Proposed Joint Discovery Plan and Scheduling Order, while
 19 the dates in Wallace's proposed schedule are calculated from the future date on which this Court
 20 decides his Motion for Leave to File Supplemental Motion to Dismiss (and, if applicable, the
 21 Supplemental Motion to Dismiss itself).

22 **B. Rule 26(f) Conference:**

23 On February 5, 2020, the Parties telephonically conducted the discovery conference (the
 24 "*Discovery Conference*") as required by Rule 26(f). In attendance on behalf of Reflex was Isaac
 25 Eddington of the law firm Smith Washburn, LLP; and in attendance on behalf of Wallace was
 26 Nicolas Spigner of the law firm Spiegel & Utrera, P.A., P.C.

1 C. Rule 26(f)(3)(A)-(B) Scope and Timing of Discovery:

2 The Parties generally believe that the statutory discovery limits in the Federal and Local
3 Rules are reasonable and sufficient. Discovery will encompass issues commonly pursued in
4 cases where violations of the Computer Fraud and Abuse Act, Unauthorized Access to
5 Computers, Intentional Interference with Prospective Economic Advantage, Negligent
6 Interference with Prospective Economic Advantage, and Common Law Unfair Competition, and
7 Unfair Competition has been alleged.

8 Reflex proposes the following timetable for discovery:

- 9 1. The discovery cut-off date shall be November 5, 2021 (270 days from the date of
10 entry of this Scheduling Order).
- 11 2. Initial Disclosures pursuant to Rule 26(a)(1) shall be exchanged on or before
12 February 22, 2021 (within 14 days after entry of this Scheduling Order).
- 13 3. The last day to amend the pleadings and add parties shall be August 6, 2021 (90 days
14 before the close of discovery).
- 15 4. The last day to file the interim status report shall be September 3, 2021 (No later than
16 60 days before the discovery cut-off).
- 17 5. The last day to disclose experts pursuant to Fed. R. Civ. P. 26(a)(2) shall be
18 September 3, 2021 (60 days before the discovery cut-off date).
- 19 6. The last day to disclose rebuttal experts shall be October 4, 2021 (30 days after the
20 initial disclosure of experts).
- 21 7. The last day to file dispositive motions shall be December 6, 2021 (30 days after the
22 discovery cut-off date).
- 23 8. The last day to file the joint pretrial order shall be January 5, 2022 (30 days after the
24 dispositive-motion deadline). In the event that dispositive motions are filed, the date
25 for filing the joint pretrial order shall be suspended until 30 days after decision on the
26 dispositive motions or until further order of the Court. In the further event that the
27 discovery period is extended from the discovery cut-off date set forth in the
28

1 Discovery Order, the date for filing the joint pretrial order shall be extended in
2 accordance with the time periods set forth in this paragraph. The disclosures required
3 by Fed. R. Civ. P. 26(a)(3) and any objections to them must be included in the joint
4 pretrial order.

5 Wallace proposes the following timetable:

6 9. The discovery cut-off date shall be 270 days from the date the Court grants or denies
7 [ECF. No. 214](#), and/or the related Supplemental Motion to Dismiss.

8 10. Initial Disclosures pursuant to Rule 26(a)(1) shall be exchanged within 14 days after
9 the Court grants or denies [ECF. No. 214](#), and/or the related Supplemental Motion to
10 Dismiss.

11 11. The last day to amend the pleadings and add parties shall be 90 days before the close
12 of discovery).

13 12. The last day to file the interim status report shall be No later than 60 days before the
14 discovery cut-off).

15 13. The last day to disclose experts pursuant to Fed. R. Civ. P. 26(a)(2) shall be 60 days
16 before the discovery cut-off date).

17 14. The last day to disclose rebuttal experts shall be 30 days after the initial disclosure of
18 experts).

19 15. The last day to file dispositive motions shall be 30 days after the discovery cut-off
20 date).

21 16. The last day to file the joint pretrial order shall be 30 days after the dispositive-
22 motion deadline). In the event that dispositive motions are filed, the date for filing the
23 joint pretrial order shall be suspended until 30 days after decision on the dispositive
24 motions or until further order of the Court. In the further event that the discovery
25 period is extended from the discovery cut-off date set forth in the Discovery Order,
26 the date for filing the joint pretrial order shall be extended in accordance with the
27

1 time periods set forth in this paragraph. The disclosures required by Fed. R. Civ. P.
2 26(a)(3) and any objections to them must be included in the joint pretrial order.

3 **D. Alternative Dispute Resolution:**

4 The Parties have met and conferred about the possibility of using alternative dispute-
5 resolution processes including mediation, arbitration, and if applicable, early neutral evaluation.
6 Of these processes, the Parties agree to mediate prior to trial at a time mutually agreeable to the
7 parties.

8 **E. Alternative Forms of Case Disposition:**

9 The Parties certify that they have considered consent to trial by a magistrate judge under
10 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short Trial Program (General Order
11 2013-01). The Parties do not consent to trial by a magistrate judge, or use of the Short Trial
12 Program.

13 **F. Electronic Evidence:**

14 The Parties do not anticipate discovery issues at this time and do not foresee any issues
15 arising from the disclosure of electronically stored information. A jury trial has been demanded,
16 and the Parties certify that they discussed whether they intend to present evidence in electronic
17 format to jurors for the purposes of jury deliberations. No stipulations were reached regarding
18 providing discovery in an electronic format compatible with the court's electronic jury evidence
19 display system, but the Parties will readdress this before they submit a Joint Pretrial Order. The
20 Parties will consult the court's website or contact the assigned judge's courtroom administrator
21 for instructions about how to prepare evidence in an electronic format and other requirements for
22 the court's electronic jury evidence display system.

23 **G. Evidence Preservation**

24 The parties have discussed the scope of anticipated discovery, including discovery of
25 electronically stored information ("ESI"). The parties have conferred pursuant to Rule 26(f)
26 regarding reasonable and proportionate steps to preserve evidence relevant to the issues
27 reasonably evident in this action. The parties have discussed and anticipate agreeing on
28

1 protocols for the production of ESI if necessary.

2 The parties have also agreed in principle to a stipulated protective order for the exchange
3 of information. If the Court adopts Reflex's proposed timetable, the Parties will expect to submit
4 the stipulated protective order by March 3, 2021 (30 days from submission of this Proposed
5 Order). If, however, the Court adopts Wallace's proposed timetable, the parties will submit the
6 stipulated protective order within 30 days of the Court's order on [ECF. No. 214](#), and/or the
7 related Supplemental Motion to Dismiss.

8 The parties will also use their best efforts to conduct discovery and depositions,
9 particularly in light of the restrictions and circumstances related to Covid-19.

10 DATED: February 5, 2021

SMITH WASHBURN, LLP

11 /s/ Mark L. Smith

12 Mark L. Smith
13 6871 Eastern Avenue., Suite 101
14 Las Vegas, NV 89119
15 Telephone: (725) 666-8701
16 Facsimile: (725) 666-8710
17 msmith@smithwashburn.com

18 *Attorneys for Reflex Media, Inc.*

19 DATED: February 5, 2021

SPIEGEL & UTRERA, P.A.

20 /s/ Michael Carrigan

21 Michael Carrigan, Esq.
22 SPIEGEL & UTRERA, P.A.
23 2545 Chandler Avenue, Suite 4
24 Las Vegas, NV 89120
25 attorneycarrigan@amerilawyer.com

26 /s/ Nicolas Spigner

27 Nicolas W. Spigner, Esq.
28 SPIEGEL & UTRERA, P.C.
8939 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90045
attorneyspigner@amerilawyer.com

Attorneys for Aaron Wallace

1
2 ORDER
3

4
5 Before the Court is the parties' proposed discovery plan and scheduling order. The parties offer
6 different position on which discovery deadlines should control.
7

8 The Court has wide discretion in controlling discovery and, more broadly, "the pretrial phase of
9 litigation." Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988); Redeker v. Cox, 2017
10 WL 2728030, at *1 (D. Nev. June 23, 2017) (citing Zivkovic v. S. Cal. Edison Co., 302 F.3d
11 1080, 1087 (9th Cir. 2002)). Having considered the parties' positions, the Court finds that
12 plaintiff's proposed schedule is appropriate at this juncture. IT IS THEREFORE ORDERED
13 that Reflex Media's proposed discovery deadlines shall control.

14 IT IS SO ORDERED
15

16 DATED: 4:47 pm, February 08, 2021
17



18
19
20
21
22
23
24
25
26
27
28
BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE